IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1488 OF 2000

Bhiva Shivram Salve Petitioner

versus

Sanjay Ghanshyam Pawar & others Respondents

Mr.V.G.Peshve for petitioner.

Mr.Vijay Killedar i/by Nitin Jamdar for respondents 1 and 2.

Mr.S.D.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd November 2005

PC :

1. Rule. By consent rule made returnable forthwith. Heard Mr.Peshve appearing for petitioner, learned APP for the State and Mr.Killedar for respondents 1 and 2.

2. Mr.Peshve informs me that the Judicial Magistrate, First Class, Pune before whom RCC No.202 of 1994 is pending, has still not concluded the trial and delivered the judgement, although, in the order passed while rejecting the application made by the petitioner herein, the

learned Judge has specifically observed that the matter is at the stage of judgement.

3. In the pending criminal case an application was filed (Exhibit-67) by the petitioner contending that though the evidence has been adduced, it is necessary to examine the witnesses enlisted in the application as also to take on record the documents produced along with list Exhibit-68. In the opinion of the learned Trial Magistrate, the petitioner complainant has not disclosed sufficient reasons for these witnesses to be examined. He has observed that the witnesses have not deposed about the photographs and other materials which are sought to be now introduced. One of the reason assigned that the applicant is old, is not sufficient ground nor his illiteracy a cause for filing such an application and invoking Section 311 of the Code of Criminal Procedure. The learned Judge has rejected the application also because it was belated and the case was postponed for judgement on 13th December 1999. The order of the Trial Magistrate is dated 8th December 1999.

4. A Criminal Revision Application bearing No.710 of 1999 was filed in the Sessions Court at

Pune and on 8th September 2000 the learned Sessions Judge has rejected the same. This is now the petitioner is before me invoking the provisions of Article 227 of the Constitution R/W Section 482 of the Cr.P.C..

5. I have heard Mr.Peshve for petitioner and Mr.Killedar for the original accused. Although, the case was adjourned for delivery of judgement, it appears that the judgement has not been delivered till this date. No reasons are forthcoming as to why the Trial Magistrate did not find it fit to dispose of this case. Moreso, when he rejects the application in question on one of the grounds namely that it is belated. The petition which is filed in this Court in the year 2000 has, after issuance of notice, reached before me today.

6. Mr.Killedar contends that Section 311 of Cr.P.C. cannot be invoked as a matter of right and not in the least for over coming any loopholes or lacuna in the prosecution case. He submits that the power to summon material witnesses or examine the person who is present in the Court, has to be exercised only to subserve the interest of justice and not allow the

prosecution to plug the loopholes or overcoming any lacuna in it's case.

7. Reliance is placed upon a decision of this Court reported in 1996-Criminal Law Journal-365 (R.N.Kakkar Vs. Hanif Gafoor Naviwala and others). This Court while dismissing the petition has in the said judgement, observed that the Special Judge was right in dismissing the application of the prosecution. In that case the learned Trial Judge had assigned specific reasons inasmuch as he had pointed out the lacuna which was sought to be filled up.

8. It is well settled that power of Court to recall any witness who is already examined or to summon any witness can be invoked even if the evidence of both sides is closed so long as the Court retains control of the criminal proceedings. It is true that the power is not to be exercised as a matter of course and to allow the prosecution to fill up any lacuna. In the instant case, however, the learned Judge merely reiterates the principle laid down by this Court in the aforesaid decision. However, the reasons that are assigned by him for rejecting the application are that the applicant has been

unable to point out any sufficient reason or cause for belatedly invoking the power of the Court u/s.311 of Cr.P.C.. In the opinion of Courts below, the reasons assigned by the complainant for not examining the witnesses earlier namely that he is old and illiterate do not appear to be just and proper. However, the Courts below have not considered as to why the application should be refused inasmuch as there is no indication as to why it is not necessary to examine the witnesses or their presence will not assist the Court in arriving at a just decision.

9. Considering the above facts and more particularly because the Trial Court has yet not delivered the judgement and concluded the trial, interest of justice would be served if a time bound schedule is determined so as to allow the petitioner an opportunity to lead evidence and for the Trial Court to take the same on record and deliver it’s judgement expeditiously.

10. The petitioner undertakes to appear before the Trial Court on 30th November 2005. The Trial Court to issue summonses to the witnesses enlisted in the application Exhibit-67. The Trial Court to complete recording of evidence

within a period of three weeks thereafter. The Trial Court shall endeavour to deliver final orders within a period of six weeks from the date of examination of the witnesses.

11. The order impugned in this petition is set aside. However, the Trial Court is directed to issue witness summons only to two witnesses namely one Manohar Hublikar and Dr.Ulhas Jadhav. The Trial Court to issue summons to a representative of Pinosh Company, provided the petitioner furnishes all particulars by 30th November 2005. Rule is made absolute to the extent indicated above.

(S.C.DHARMADHIKARI, J.)